

SERVICE DATE - APRIL 20, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-C-35002

TYCO INTERNATIONAL (US) INC.–PETITION FOR DECLARATORY ORDER–
CONTRACTING FOR MOTOR CARRIER SERVICES

Decided: April 18, 2001

Tyco International (US) Inc. (Tyco) asks us to issue an order declaring that a form transportation contract designed by Tyco (which Tyco describes as an “Offer for Provision of Transportation Services” or “purchase offer”) is lawful and binding on motor carriers that receive it and subsequently provide transportation services for Tyco and its affiliates. For the reasons discussed below, we will deny the request.

BACKGROUND

Tyco and its affiliated companies ship freight from more than 1,000 points throughout the country. Tyco wants to control the rates and other terms that will govern its shipments in motor carriage. Tyco states that it incurs considerably greater transportation costs when common carrier rates and conditions apply in lieu of the contract rates and conditions that it prefers to use.

To provide cost stability and certainty of terms and conditions, Tyco developed the purchase offer, which incorporates its proposed master transportation contract, to apply to prepaid shipments that originate at specifically designated facilities. Tyco contends that the purchase offer does not have to be signed or accepted to be deemed a binding contract, because the purchase offer and accompanying cover letter notify the motor carriers receiving these documents that the carriers will be deemed to have accepted Tyco’s terms and conditions when the motor carriers issue bills of lading or freight receipts for shipments tendered by Tyco and its affiliates.¹

¹ At the top of the purchase offer is a notice section, which provides in underlined, bold print:

Notice is hereby given that if carrier, after this offer is transmitted to it, issues a bill of lading and/or receipt for transportation of shipper’s outbound prepaid shipments (see Appendix A) from a point on the list of Tyco locations attached as Appendix B, such issuance shall constitute acceptance of this offer and all its terms, conditions, and pricing, including those contained

(continued...)

Tyco takes the position that the motor carrier industry operates like, and should be subject to the same standards that apply to, unregulated industries with respect to the offer and acceptance of purchase orders. Tyco argues that a motor carrier that receives a written offer to engage its transportation services and responds by issuing a bill of lading or freight bill should be bound by the terms of the offer, subject only to state contract law and the Uniform Commercial Code, where applicable.

Tyco states that its use of the purchase offer has resulted in controversies with motor carriers and that these controversies are ripe for resolution.² If the purchase offer is found to be a permissible way of guaranteeing particular terms and conditions, Tyco claims that it and its affiliated companies would be relieved of the burden of resolving disputes individually with motor carriers that have transported freight under common carrier rates and conditions after having received and rejected Tyco's purchase offers. Specifically, Tyco requests that we find: (1) the purchase offer procedure to be a lawful means of contracting for motor carrier transportation services under 49 U.S.C. 14101(b); and (2) the contract rates and conditions in the purchase offer, and not common carrier rates and conditions, to be applicable under 49 U.S.C. 13710(a)(2) to any transportation performed for Tyco and its affiliates by motor carriers that have received its purchase offers.

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, we have discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. We have reviewed Tyco's petition and have determined that there is no basis for instituting a declaratory order proceeding here.

As Tyco appears to recognize, there can be a valid contract — whether for transportation services, or for non-transportation goods or services — only if the parties have agreed to be bound by its terms. Tyco wants us to declare that, regardless of any other circumstances, a motor carrier's issuance of a bill of lading would necessarily equate to acceptance of Tyco's terms. But the existence of a good faith, negotiated agreement sufficient to meet the definition of contract

¹(...continued)
in Appendices A and B.

The purchase offer comes with three attachments: (1) an addendum containing the terms and conditions of the offer and the terms and conditions of carriage; (2) Appendix A, which contains the pricing terms and effective date; and (3) Appendix B, a 45-page alphabetical list showing the applicable shipping locations of Tyco and its affiliated companies.

² In support of its request for declaratory relief, Tyco has appended, as Appendix D to its petition, letters from four motor carriers rejecting its purchase offer.

carriage can only be determined by considering the “totality of the circumstances” surrounding a particular movement. See Contracts for the Transportation of Property, 8 I.C.C.2d 520, 529 (1992) (Contracts). Thus, the type of broad, abstract declaration that Tyco seeks is inappropriate.

Even as to the four carriers about which Tyco has submitted some specific information (their letters explicitly rejecting its contract tender), we have not been provided with a full account of the totality of the circumstances surrounding any particular movement. It is our view, however, that where a carrier has specifically rejected Tyco’s offer and there is no other evidence that the carrier later changed its position, it cannot be deemed to have agreed to the rejected terms simply because it later accepted, and issued a bill of lading for, Tyco’s traffic. That is because, under 49 U.S.C. 14101(a), motor carriers have an obligation to provide transportation service on reasonable request. And in holding out their services, they have the right to set the rates and other terms for the services that they hold out. Of course, shippers have the right to negotiate for other rates and terms, and Tyco is perfectly free to propose its own terms and to decline to tender traffic to any carrier that does not agree to Tyco’s terms. But when a carrier has explicitly rejected Tyco’s purchase order, if Tyco still tenders a shipment to it, the carrier is legally bound to accept the shipment if it is able to do so. Accordingly, the carrier cannot be deemed to have accepted terms that it has explicitly rejected merely because it accepts the freight and issues a bill of lading.

For these reasons, we deny Tyco’s request for a declaratory order.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition is denied.
2. This decision is effective on the service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary